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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,727	11/08/2001	Jeffrey A. Welton	THE 0243 PUS	6142
46726	7590	03/11/2005	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 03/11/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/008,727	Applicant(s) WELTON ET AL.	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/28/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/28/2005 has been entered.

Claims

Claims 1-7 and 10-12 are pending.

Claims 8-9 and 13-14 have been canceled.

Applicant's arguments

Applicant's arguments with respect to claims 1-7 and 10-12 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims, by addition and deletion of language, to be of a scope not previously examined. In particular, consistent with applicant's argument that the prior art does not show and/or teach certain feature of the now claimed invention set forth in amended claims 1, 6, 7 and 12 which now include, for example:

- *"said plurality of ports formed continuously and substantially evenly spaced around each of said fingers and each of said ports formed as a slot in an upper portion of said peripheral wall."*

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See the following prior art cited to support the rejection of the invention as now set forth in applicant's claims.

Claim Objections

Claim 1 is objected to because of the following informalities:

- In line 10, the term "peripheral wall" should be -- the peripheral wall --.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

See the following prior art cited to support the rejection of the invention as now set forth in applicant's claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims fail to accurately describe the invention in a manner consistent with applicant's specification. See for example, page 6, lines 19-22 of applicant's specification which states:

"The opening 56 receives a threaded sleeve 72 of a jet holder 74. The 20 externally threaded sleeve 72 also includes internal elements, cooperating with the indexer - forming parts, for example, splines 38 of the burner head stem 36, to form the indexer."

It appears applicant's claims 7, 10 and 11 however appear to define splines on each of the collar and stem as well as "an indexer carried by said collar". There appears to be no support for this structure in applicant's specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6: Rejected under 35 U.S.C. 103(a)

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/30838 (Martin et al.)(newly cited) in view of US006371754 (Haynes) or JP 59-52113(of record).

WO 98/30838 (Martin et al.) shows and discloses the following:

- 1) a burner head (6, or 8) having a plurality of fingers (18, or 20) and a peripheral wall with a plurality of "second" ports formed as continuously and substantially evenly spaced slots (34, or 40) in an upper portion of the peripheral wall; and,
- 2) a cap (4, or 6) having a plurality of overlapping fingers which correspond in number to the burner head fingers (see figures 2- 4);

WO 98/30838 (Martin et al.) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a plurality of flame vents including:
 - a recess formed in the cap;
 - an expanded transfer area intermediate the ports;

US006371754 (Haynes) teaches, from the same stovetop burner field of endeavor as WO 98/30838 (Martin et al.) providing:

- a plurality of scalloped flame vents (22, 200) formed as a recess and connecting adjacent ports (32) along the peripheral wall of a burner for forming a pilot flame arrangement to aide in propagating a flame between burner ports during, for example, ignition.

JP 59-52113(of record) teaches, from the same stovetop burner field of endeavor as WO 98/30838 (Martin et al.) providing:

- a plurality of scalloped flame vents (52, 53, 54) formed as a recess and connecting adjacent ports (51) along the peripheral wall of a burner for forming a pilot flame arrangement to aide in propagating a flame between burner ports during, for example, ignition.

In regard to claims 1-6, for the purpose of aiding propagation of flames between the ports of WO 98/30838 (Martin et al.), it would have been obvious to a person having ordinary skill in the art to modify the recess lip of WO 98/30838 (Martin et al.) to include scalloped shaped plural flame vents connecting adjacent ports along the peripheral wall of a burner, in view of the teaching of US006371754 (Haynes) or JP 59-52113(of record).

Claims 7, 10, 11, 12: Rejected under 35 U.S.C. 103(a)

Claims 7, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/30838 (Martin et al.)(newly cited) in view of Graves (US 1196230).

WO 98/30838 (Martin et al.) shows and discloses the following:

- a burner head (6, or 8) having a plurality of fingers (18, or 20) and a peripheral wall with a plurality of "second" ports formed as continuously and substantially evenly spaced slots (34, or 40) in an upper portion of the peripheral wall; and,
- a cap (4, or 6) having a plurality of overlapping fingers which correspond in number to the burner head fingers (see figures 2- 4);

WO 98/30838 (Martin et al.) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- an indexer carried by the collar and the stem limiting insertion of the stem to at least one predetermined alignment wherein the indexer aligns one upper member in the at least one predetermined alignment with the base and the indexer including a plurality of splines on the collar and the stem interlocking with one another in at least one predetermined alignment.

Graves (US 1196230) teaches, from the same stove type burner field of endeavor as WO 98/30838 (Martin et al.) a cook top burner comprising:

- a base (11, 13) for mounting the burner in a cooktop (1);

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- at least one upper member defining at least part a plurality of ports on a plurality of fingers;
- a collar (12; figure 4) carried by the base and the collar including a plurality of splines (16a) around the periphery thereof;
- a stem (15) carried by the at least one upper member (20) and the stem including a plurality of splines (17) around the periphery thereof; and
- an indexer (16,16a,17) carried by the collar and the stem limiting insertion of the stem to at least one predetermined alignment, the indexer aligning the at least one upper member in the at least one predetermined alignment with the base, the indexer including the plurality of splines on the collar and the stem interlocking with one another in the at least one predetermined alignment.

In regard to claims 7, 10, 11 and 12, for the purpose of providing different positions relative to the top of the stove, it would have been obvious to a person having ordinary skill in the art to provide WO 98/30838 (Martin et al.) with an indexer carried by a collar and a stem limiting insertion of the stem to at least one predetermined alignment wherein the indexer aligns one upper member in the at least one predetermined alignment with the base and the indexer including a plurality of splines on the collar and the stem interlocking with one another in at least one predetermined alignment, in view of the teaching of Graves. In regard to claims 10 and 12, WO 98/30838 (Martin et al.) provides an ignition element (28) aligned with one adjacent flame port to ensure ignition of a burner flame.

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Conclusion

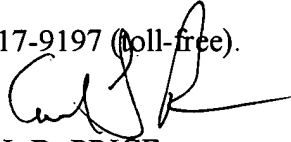
See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CARL D. PRICE
Primary Examiner
Art Unit 3749

CP